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(i) Such broker-dealer is clearly identified as the person performing the brokerage services;

(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations;

(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations; and

(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

(2) Directly or indirectly receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, provided, however, that this subsection shall not apply if the bank executes transactions through a registered broker-dealer and:

(i) Each account independently chooses the broker-dealer through which execution is effected;

(ii) The bank's personnel do not receive, directly or indirectly, transaction-related compensation or compensation based upon the number of accounts choosing to use the registered broker-dealer; and

(iii) The brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed; or

(3) Deals in or underwrites securities.

(b) This rule shall not apply to any bank that engages in one or more of the following activities only:

(1) Effects transactions in exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(2) Effects no more than 1,000 transactions each year in securities other than exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(3) Effects transactions for the investment portfolio of affiliated companies;

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(4) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less;

(5) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries;

(6) Effects transactions pursuant to sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; or

(7) Is subject to section 15(e) of the Act.

(c) The Commission, upon written request, or upon its own motion, may exempt a bank, either unconditionally or on specific terms and conditions, where the Commission determines that the bank's activities are not within the intended meaning and purpose of this rule.

(d) For purposes of this section, the term *transaction-related compensation* shall mean monetary profit to the bank in excess of cost recovery for providing brokerage execution services.

[50 FR 28394, July 12, 1985]

§ 240.3b-10 [Reserved]

§ 240.3b-11 Definitions relating to limited partnership roll-up transactions for purposes of sections 6(b)(9), 14(h) and 15A(b)(12)-(13).

For purposes of sections 6(b)(9), 14(h) and 15A(b)(12)-(13) of the Act (15 U.S.C. 78f(b)(9), 78n(h) and 78o-3(b)(12)-(13)):

(a) The term *limited partnership roll-up transaction* does not include a transaction involving only entities that are not "finite-life" as defined in Item 901(b)(2) of Regulation S-K (§ 229.901(b)(2) of this chapter).

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(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c) The term *regularly traded* shall be defined as in Item 901(c)(2)(v)(C) of Regulation S-K (§ 229.901(c)(2)(v)(C) of this chapter).

[59 FR 63684, Dec. 8, 1994]

§ 240.3b-12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer), and whose securities activities:

(a) Are limited to:

(1) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(2) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(3) Engaging in cash management securities activities;

(4) Engaging in ancillary portfolio management securities activities; and

(5) Engaging in such other securities activities that the Commission designates by order pursuant to § 240.15a-1(b)(1); and

(b) Consist primarily of the activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section; and

(c) Do not consist of any other securities activities, including engaging in any transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(d) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any

event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

[63 FR 59394, Nov. 3, 1998]

§ 240.3b-13 Definition of eligible OTC derivative instrument.

(a) Except as otherwise provided in paragraph (b) of this section, the term *eligible OTC derivative instrument* means any contract, agreement, or transaction that:

(1) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind; or

(2) Involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence; or

(3) Involves any combination or permutation of any contract, agreement, or transaction or underlying interest, property, or event described in paragraphs (a)(1) or (a)(2) of this section.

(b) The term *eligible OTC derivative instrument* does not include any contract, agreement, or transaction that:

(1) Provides for the purchase or sale of a security, on a firm basis, unless:

(i) The settlement date for such purchase or sale occurs at least one year following the trade date or, in the case of an eligible forward contract, at least four months following the trade date; or

(ii) The material economic features of the contract, agreement, or transaction consist primarily of features of a type described in paragraph (a) of this section other than the provision for the purchase or sale of a security on a firm basis; or

(2) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, any security (or group or index of securities), and is: